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2007 SEP -7 P 4:41
AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF GOLD CANYON SEWER COMPANY,
AN ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANT AND PROPERTY
AND FOR INCREASES IN ITS RATES
AND CHARGES FOR UTILITY SERVICE
BASED THEREON.

DOCKET NO: SW-02519A-06-0015

NOTICE OF FILING

Gold Canyon Sewer Company ("Gold Canyon" or the "Company") hereby
submits this Notice of Filing the Transcript ("Transcript") of Proceedings from the
August 1, 2007 Special Open Meeting, Agenda Item 2, which is attached hereto as
Exhibit A.

No court reporter was present during the proceeding and the Transcript was created
by transcription of an audio tape of the proceeding obtained from the Commission. The
Transcript is being filed as a courtesy for all parties to this matter and the Commission.
However, the Company does not take any responsibility for the Transcript's accuracy.
Nor does the Company waive any right to challenge the Commission's decision by virtue
of this courtesy filing.

Arizona Corporation Commission

DOCKETED

SEP -7 2007

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nr

1 RESPECTFULLY SUBMITTED this 7th day of September, 2007.

2 FENNEMORE CRAIG, P.C.

3 

4 By _____

5 J. L. Shapiro

6 Todd Wiley

7 Patrick J. Black

8 3003 North Central Avenue, Suite 2600

9 Phoenix, Arizona 85012

 Attorneys for Gold Canyon Sewer Company

10 ORIGINAL and thirteen (13) copies of the
11 foregoing were delivered this
12 7th day of September, 2007, to:

13 Docket Control
14 Arizona Corporation Commission
15 1200 W. Washington St.
16 Phoenix, AZ 85007

17 COPIES hand delivered
18 this 7th day of September, 2007 to:

19 Dwight D. Nodes
20 Assistant Chief Administrative Law Judge
21 Arizona Corporation Commission
22 1200 W. Washington Street
23 Phoenix, AZ 85007

24 Keith Layton
25 Legal Division
26 Arizona Corporation Commission
 1200 W. Washington Street
 Phoenix, AZ 85007

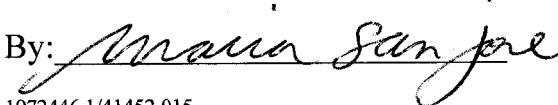
1 A copy of the foregoing was mailed
2 this 7th day of September, 2007, to:

3 Dan Pozefsky
4 Residential Utility Consumer Office
5 1110 W. Washington Street, Ste. 200
6 Phoenix, AZ 85007

7 Andy Kurtz
8 MountainBrook Village at Gold Canyon Ranch Association
9 5674 South Marble Drive
10 Gold Canyon, Arizona 85218

11 Mark A. Tucker
12 2650 E. Southern Ave.
13 Mesa, AZ 85204

14 By:



1972446.1/41452.015

Exhibit A

1 THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING

2

3 BEFORE THE ARIZONA CORPORATION COMMISSION

4

5 Residential Utility Consumer)
6 Office's ("RUCO") Application)
7 for Rehearing of Decision No.) Docket No.
69440, Gold Canyon Sewer) SW-02519A-06-0015
Company.)
_____)

8

9

10 At: Phoenix, Arizona

11 Date: August 01, 2007

12

13

14 TRANSCRIPT OF PROCEEDINGS

15 SPECIAL OPEN MEETING

16 COMMISSION STAFF MEETING

17 AGENDA ITEM 2

18

19

20 ARIZONA REPORTING SERVICE, INC.
21 Court Reporting
Suite 502
22 2200 North Central Avenue
Phoenix, AZ 85004-1481

23

24 Transcribed by:
Katherine A. McNally
(Original) CERTIFIED TRANSCRIBER
25 CET**D-323

1 THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING

2 BE IT REMEMBERED that an Open Meeting was held
3 at the Arizona Corporation Commission, 1200 West
4 Washington Street, Phoenix, Arizona, commencing on the
5 1st day of August, 2007.

6

7 BEFORE: MIKE GLEASON, Chairman
WILLIAM A. MUNDELL, Commissioner
8 JEFF HATCH-MILLER, Commissioner,
Appearing Telephonically
9 KRISTIN K. MAYES, Commissioner
GARY PIERCE, Commissioner

10

11 APPEARANCES:

12 ARIZONA CORPORATION COMMISSION:
CHRISTOPHER KEMPLEY, Chief Counsel

13

14 ARIZONA CORPORATION COMMISSION, HEARING DIVISION:
LYN FARMER, Chief Administrative Law Judge

15 ARIZONA CORPORATION COMMISSION, UTILITIES DIVISION:
ERNEST JOHNSON, Director

16

17 GOLD CANYON SEWER COMPANY
JAY L. SHAPIRO, Fennemore Craig, P.C.

18

19

20 Katherine A. McNally
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2 (Commencement electronically recorded,
3 excerpted Item 2 proceedings.)

4 * * * * *

5 CHMN. GLEASON: Okay. We'll go to Item Number
6 2 on the agenda.

7 Legal, how do we proceed on this thing?

8 MR. KEMPLEY: Mr. Chairman, Commissioners, this
9 is noticed for the Commission to consider whether it
10 wishes to grant the applications for rehearing by RUCO in
11 the Gold Canyon rate case. And it's contemplated by the
12 way it's noticed that what the decision would be made at
13 this hear -- or at this meeting would simply be to grant
14 that application for rehearing and conduct the proceeding
15 of the rehearing at a later time.

16 Additionally, in an abundance of caution, the
17 notice provides a provision that, if appropriate,
18 consideration of the matter under A.R.S. 40-252 could be
19 encompassed in the hearing, on rehearing.

20 My general opinion is that once the Commission
21 that has granted an application for rehearing and
22 commences a hearing, unless it decides otherwise,
23 essentially all issues are open for debate and hearing.

24 But clearly, if you granted the rehearing, and
25 specified that you were doing so under 40-252 in addition

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2 to the application for rehearing, that kind of a process
3 would necessarily open up all issues or any issues that
4 the Commissioners specified in the course of the
5 proceeding.

6 CHMN. GLEASON: I have a question. I guess
7 anything that's mentioned in that RUCO's application would
8 be fair game?

9 MR. KEMPLEY: Mr. Chairman, certainly in terms
10 of the discussion among Commissioners, based on the way
11 this is noticed, you could consider granting that
12 application to consider all or part of the application for
13 rehearing that RUCO filed.

14 CHMN. GLEASON: Thank you.

15 COM. MAYES: Thank you, Chairman.

16 Well, as you know, I was one of the
17 Commissioners who issued a letter calling for rehearing
18 after RUCO filed its request.

19 And obviously I'm interested in re-addressing
20 (indiscernible) limits that didn't pass on excess capacity
21 and the hypothetical capital structure, which would have
22 produced the increase to \$46 a month.

23 But what I want to ask you, Mr. Kempley, is I
24 guess I don't -- I didn't understand, quite, your answer
25 to the Chairman or -- I don't know if it was an answer to

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2 the Chairman.

3 But are you suggesting we don't need a 40-252?
4 Or that we ought to do it as one of the
5 boots-and-suspenders kind of thing? Or we just grant the
6 rehearing and move forward on the issues that RUCO has
7 outlined, and then that obviously I outlined in my
8 letter?

9 MR. KEMPLEY: Mr. Chairman, Commissioner Mayes,
10 I guess what I was trying to say is that you have -- with
11 this notice the way it is, you can provide for a hearing
12 on any set of issues that you might wish to do so. You
13 could limit the rehearing to only the issues that are
14 requested in RUCO's application for rehearing, or only a
15 set of these issues. Or you could broaden the hearing and
16 conduct the hearing on --

17 Well, you could simply relitigate the whole
18 case, if that's what you wanted to do.

19 COM. MAYES: Well, you know -- and I just want
20 to be clear -- if we vote to grant the motion for
21 rehearing then that gives us the opportunity, at that
22 time, to alter the order? Or what -- would we not be
23 altering the order? Are we --

24 Because a 40-252 is a change to an existing
25 order, as I understand it.

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2 So in the rehearing, I just want to make sure
3 that at that time we would be able to pass an amendment --
4 amendments either -- you know, well, very similar to the
5 ones that I offered in the original case or some other
6 amendment offered by some other Commissioner to address
7 those issues, and then it would be done.

8 MR. KEMPLEY: Mr. Chairman, Commissioner Mayes,
9 that is certainly a way this could proceed.

10 COM. MAYES: Okay.

11 MALE SPEAKER: Mr. Chairman, well, there's
12 just -- there is an error in the -- the second line, that
13 decision number is 69664, not 69440. Just so that, you
14 know --

15 CHMN. GLEASON: Okay. 69664?

16 MALE SPEAKER: 69664.

17 MALE SPEAKER: Mr. Chairman, if I could, and I
18 realize that probably since I wrote a letter, and was the
19 only Commissioner that voted for the order, that probably
20 I ought to say what concerns me here.

21 And I think Commissioner Mayes has two issues
22 on the hypothetical capital structure and the excess
23 capacity are the two primary issues.

24 And personally, I feel like anything that's not
25 germane to those two issues should be declared out of

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2 order and we just would have a rehearing on those specific
3 issues. And I really don't want to see a prolonged
4 hearing process, because that's not really in anybody's
5 interest, because I can't think of anything that probably
6 wasn't covered, and if the parties would see something
7 differently than that.

8 But at some point perhaps we should hear from
9 the parties, if that's, you know, something that you would
10 want to do, with respect to their need to put on any
11 additional evidence. Because I would like to see that
12 limited, based on the fact that we already had quite a
13 hearing on this before.

14 But I think that perhaps the ALJ should be
15 assigned to hearing additional evidence, if there is any
16 on those issues. And that we maybe just have a -- have a
17 hearing that's maybe for a half hour, 15 on each side, and
18 then we immediately go into our open meeting and make
19 amendments, do what we're going to do, and resolve this,
20 if that works.

21 CHMN. GLEASON: I don't think that's possible.
22 We tend to talk more than that.

23 COM. MUNDELL: And Mr. Chairman, whenever --
24 you can't see my hand up, but whenever it's appropriate,
25 I'd like to interject a couple thoughts.

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2 CHMN. GLEASON: Yeah. Well, let me just answer
3 things.

4 One thing, we voted on this thing 3-2. This
5 rehearing is not going to be a small affair. It's going
6 to rehear the whole rate case. It's going to be a cost to
7 the Commission in time and money, and there's going to be
8 an increased cost in the rate case.

9 The excess capacity, we accepted what Staff
10 said. And as far as I'm concerned, Staff was correct.
11 They need the 1.9 billion gallons per day in a couple of
12 years.

13 To date, in the -- the data in the case was
14 '05; we're now on '07. The people at Gold Canyon are now
15 using the plant that -- and the projected use in '07,
16 midyear, which is now, is 1.5 million gallons per day.

17 ADEQ rates are that when the peak capacity is
18 within 20 percent of capacity, that's 1.5 million gallons
19 per day, to require that there be new plants. When it
20 reaches 90 percent, there must be started construction.

21 Now, the rule says that RUCO can't have it both
22 ways. First, they said that building a plant was
23 prudent. I said -- that's what RUCO admitted, that the
24 building of the plant was prudent. And then they said
25 that the plant -- it wasn't prudent to put it in rate

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2 base.

3 Now, this amendment was defeated on a 4-1 vote,
4 as I recall.

5 The capital structure, Staff was correct. They
6 figured the discounted cash flow at 10 percent -- 10.2
7 percent and reduced that a hundred data points to 9.2.
8 This is a -- there's -- so we were correct when we voted
9 it in there.

10 The -- if we use Staff's 9.2, the combined cost
11 of capital is only -- it comes up to about 8.9 capital.
12 We used Staff's numbers; and the Staff was correct; we
13 voted on Staff data. RUCO was wrong.

14 They didn't -- this is going to (indiscernible)
15 that rate case expenses increase, there will be a rate --
16 and we can't -- (indiscernible) we must include rate case
17 expenses because the rate case expenses will increase.

18 We must -- we must, in all fairness, just
19 consider other factors than these two, because this
20 gets -- smacks of single issue ratemaking and we can
21 consider these (indiscernible).

22 We must consider the other factors and that's
23 why we need a 252 consideration.

24 Okay. Mundell?

25 COM. MUNDELL: Thank you, Mr. Chairman.

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2 Mr. Kempley, if I understand it, and I heard
3 what you said, if we just grant the application for
4 rehearing, we're going to deal with the issues that were
5 raised in RUCO's application. So for purposes of today's
6 meeting, our choices are: A) Grant their application for
7 rehearing, which then would limit the inquiry to the
8 issues discussed in their applications; or if we want to
9 have a broader evidentiary hearing, then we would grant
10 the 252. Is that what you're saying succinctly?

11 MR. KEMPLEY: Mr. Chairman, Commissioner
12 Mundell, I don't think it's quite that -- that clear,
13 because reading the rehearing statute, it seems to me that
14 even if you vote to grant the application for rehearing,
15 that unless you specifically identify the issue or issues
16 that you wish to rehear, that the avenue is open for what
17 the -- the statute calls consideration of all the facts.

18 And so I don't think that simply by saying you
19 grant the application for rehearing, without more, that
20 you completely limit the issues to the ones that are
21 specified in RUCO's application for rehearing.

22 COM. MUNDELL: Well, I -- thank you, very
23 much. I appreciate that clarification, so whatever we
24 decide to do, then we can be clear about it. Thank you.
25 That helped.

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2 Thank you, Mr. Chairman.

3 COM. PIERCE: I hope the mountain views are
4 beautiful up there, while you're sitting there talking on
5 the phone.

6 CHMN. GLEASON: Well, it's about 65 degrees
7 out, Commissioner, so it's very nice.

8 COM. PIERCE: I'll trade you anytime you want
9 to come back, I'll go out there and take over your place.

10 Have a great trip, by the way.

11 Anyway, I guess my issue is this, that it
12 appears that three members of this Commission would like
13 to rehear this argument. If that's the case, then that's
14 the case.

15 And so we'll have to look at what is it that
16 we're really trying to discuss. And at least a big part
17 of what we're going to have to discuss is the difference
18 between taking some (indiscernible) with the excess
19 capacity and having -- and having a high rate increase
20 that is really causing (indiscernible). I mean, it's
21 those kind of things (indiscernible).

22 I'm not sure that what we had enough testimony
23 during the original hearing from any kind of outside
24 experts as to what appropriate best practices are in terms
25 of having adequate reserves, the margin.

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2 I think the other thing that I want to make
3 sure that we talk about is, How do we hold the company
4 harmless? If we hold them back from building what
5 supposedly, according to the Chairman, is a needed
6 infrastructure, how do we hold the company harmless for
7 violations under ADEQ and/or -- and God forbid -- because
8 the thing that I was worrying about when I was up there
9 (indiscernible) was I've gone through some -- just some
10 nightmares of raw sewage, and (indiscernible) raw sewage
11 and back-of-plant stench, that I do not want to recreate.

12 If we do move in a direction that might
13 recreate that, I think that there ought to be some
14 discussion that if you don't let the company move in a
15 certain direction that seems appropriate -- and again,
16 that's why outside experts about best practices are
17 critical here -- if it's not -- if they want to make an
18 appropriate action and we say they cannot do so, then how
19 do -- how do we protect the company from what --

20 We come down and laugh on these companies that
21 put sewage in the -- in the creek. So you know, we -- we
22 have all sorts of fines and penalties and hearings on
23 that.

24 So I think those two -- for me those are the
25 two issues. One is outside expertise -- not the

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2 companys', not Staff's -- on what is adequate excess
3 capacity? How do you build for the future as an
4 appropriate mechanism?

5 And then two, if we say you can't build
6 according to that best practice, how do we hold the
7 company harmless?

8 Those are the only two issues that I -- I'm
9 going to spend much time on during anything.

10 COM. MAYES: Mr. Chairman?

11 CHMN. GLEASON: Yes.

12 COM. MAYES: Well -- and I certainly appreciate
13 the -- my colleague's apparent willingness to reconsider
14 the case. But I would remind us that the issue -- the
15 plant is built -- the issue is whether current rate payers
16 should be charged for excess capacity in the test year or
17 whether that should wait until a future year? I mean,
18 it's really not about the plant that was built; it's about
19 who should be charged and when.

20 And then the other issue is the hypothetical
21 capital structure that doesn't go at all to the issue of
22 safety? I mean, I don't think anybody is suggesting that
23 Gold Canyon hasn't built a safe plant or hasn't done what
24 it should have done.

25 The question is, who pays and when? And I have

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2 two amendments, and I think I hopefully can re-address
3 them, that says, Look, you know, this was an enormous rate
4 increase, and the way that it was done was not correct.

5 So I -- you know, that -- those are the issues.

6 The issue of bringing in outside experts, I
7 think that's going to prolong the case. That will -- that
8 will create an additional rate case expense. And I think
9 those issues have been addressed by various experts for
10 RUCO. I mean, if you read the transcript of the hearing,
11 you know, clearly those issues were addressed already by
12 witnesses that were provided by Staff and by RUCO and by
13 the company.

14 COM PIERCE: Well, again, I think you, you
15 know -- you're right. The plant out there right now is
16 built. But I think that this is a precedent-setting
17 process.

18 I mean, this is a signal to the industry as a
19 whole. This is not just about this case. This is about
20 every sewage treatment/wastewater treatment facility in
21 the State of Arizona. It's about how much capital are you
22 going to risk in going forward? That's what it's about.

23 And if the evidence was so overwhelmingly clear
24 from the hearing itself, there wouldn't have been a 3-2
25 vote. It would have been a -- it would have been a 5-0

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2 vote.

3 And so, you know, clearly, there is some --
4 there is -- I understand that some people have -- and some
5 of us have, and rightfully so -- I have real grave concern
6 over the impact on the community. There's no doubt about
7 that. And I don't want to -- and it's over arsenic
8 treatment and all sorts of stuff; the cost of water and
9 the cost of sewage treatment, a lot because of
10 environmental regulations, those were other things as
11 well -- has gone through the roof. I understand that.
12 And it's really not good for Arizona.

13 On the other hand, we have to realize that
14 every time we make this kind of decision, we don't just
15 make a decision for that company. We send a signal to the
16 industry as a whole, and the people who analyze it, as to
17 how we're going to proceed in the future. What are --
18 what are we going to rely on to recover?

19 And for a company maybe that has a ton of
20 money, it's not an issue. But for --

21 COM. MAYES: This is a company --

22 COM PIERCE: I understand.

23 COM. MAYES: Commissioner, it's a company that
24 has a ton of money.

25 COM PIERCE: I understand. It's not an issue

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2 for people that have a lot of money. But it is -- it is
3 an issue for companies that don't have that kind of
4 capital margin, and are -- are going to say, I'm not going
5 to risk -- you know, I'm between a rock and a hard place.
6 I've got ADEQ, I've got best practices. I'm got -- I'm
7 not going to be able to recover the capital, in a timely
8 manner. How do I proceed?

9 We've got to -- we've got to make sure that
10 we've clarified that message.

11 COM. MAYES: Well --

12 COM PIERCE: And I think, again, for me, it's
13 going to be absolutely essential to have some kind of
14 non-RUCO -- I don't want somebody that sits down there for
15 RUCO, standing there for our Staff, or standing there for
16 the companies.

17 I want somebody who can come in here and say,
18 This is what you have to do is you're going to stay ahead
19 of the growth in Arizona on these kinds of treatment
20 plants.

21 COM. MAYES: Yeah. Well, Mr. Chairman, and I
22 appreciate those thoughts.

23 I would just say, I agree. This is -- this
24 does send a signal and the signal we sent was that we
25 don't care about rate payers. That's my view. Because we

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2 didn't (indiscernible).

3 CHMN. GLEASON: Well, I take exception to that.

4 COM. MAYES: Well, can I finish?

5 CHMN. GLEASON: (Indiscernible.)

6 COM. MAYES: Well, you may -- you may very well
7 take exception, but that's what RUCO wrote in its filing
8 and they represent the rate payers in the state.

9 We didn't adopt three amendments that could
10 have helped. So yes, we're sending a signal by what we
11 do.

12 And I know that I just made a strong statement,
13 but I feel it strongly. We adopted rates that -- that
14 were so high that an entire community is up in arms over
15 this. And that's why I supported RUCO's proposal.

16 Let me -- let me read from page 5 of RUCO's
17 application: "In balancing the interest of rate payers
18 and the company, fair rates do not appear to be a concern
19 of the Arizona Corporation Commission."

20 Now, like it or not, that's what the entity
21 representing the rate payers of this state said about our
22 decision. And so I think we need to take it seriously.

23 CHMN. GLEASON: Yes. Just a minute now. Let
24 me -- let me answer this.

25 I intend to ask RUCO for an apology on that

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2 statement, that this Commission is not -- as a historic,
3 they have not put aside rate payers.

4 COM. MAYES: I agree with that.

5 CHMN. GLEASON: Okay. Then why do you agree
6 with that statement?

7 COM. MAYES: Because we did it in this case.

8 CHMN. GLEASON: No. But that doesn't say in
9 this case. It says that the -- it just says it's a
10 blanket statement.

11 Now, Number 2, unfortunately out there, that
12 plant was a bad plant when it was built. When the present
13 company took it over, as you said, there was sewage
14 running down the gutters down there. When that company
15 took it over, they spent a lot of money to bring it up to
16 standard. Right now, it is at the 20 percent of peak --
17 of peak capacity.

18 This is DEQ's rules, it's not ours. So the
19 plant was at capacity, and we needed -- RUCO said it was
20 prudent to build it.

21 COM. MAYES: Um-hmm.

22 CHMN. GLEASON: That's an -- that's an agenda
23 in the question. That's in the thing.

24 RUCO said it was in -- in the rate case. Now,
25 the rate increase, unfortunately, is large. But it was

1 THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING
2 because it was a poor plant and they -- the company had to
3 rebuild it. Now, what the plant capacity is now and at
4 capacity.

5 And Staff wrote this. They went out and
6 studied it. They probably studied more than RUCO did.
7 But again, the --

8 COM. MAYES: What about the hypothetical
9 capital structure?

10 CHMN. GLEASON: What?

11 COM. MUNDELL: Mr. Chairman, at some point I
12 would like to jump in.

13 CHMN. GLEASON: That -- that was -- again, that
14 was a Staff decision.

15 COM. MAYES: Well, that was our decision,
16 Mr. Chairman.

17 CHMN. GLEASON: No. No. We accepted Staff's
18 decision. Staff, under discounted cash --

19 COM. MAYES: Well, I did not necessarily.

20 CHMN. GLEASON: Staff calculated discounted
21 cash flow of 10.2 percent. And they -- they took off
22 100 basis points and made it 9.2. That was a correct
23 decision. And I thought that was a 4-1 decision on the --

24 COM. MAYES: Mr. Chairman, it was not a 4-1
25 decision. It was a 3-2 decision. We've checked.

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2 CHMN. GLEASON: How did you check?

3 COM. MAYES: My Staff just did it when you said
4 that.

5 CHMN. GLEASON: It wasn't -- it wasn't in the
6 record.

7 COM. MAYES: Well --

8 CHMN. GLEASON: Because that was a motion. It
9 was -- and I heard it as a 4-1.

10 COM. MAYES: You did? Well -- all right.

11 These are all issues that we can -- that we can address at
12 a rate hearing.

13 CHMN. GLEASON: Okay. Fine. If we're going to
14 open this thing up, then we open it up for one thing,
15 to -- the rate case.

16 If you recall, the rate case had a very unusual
17 thing. RUCO discounted the bills from the legal company
18 to the rate (indiscernible) because they had certain
19 things blacked out.

20 RUCO never asked for, confidentially, to have
21 those examined. If when we hear -- rehear this thing,
22 we're going to have that, and I will suggest that legal --
23 we have a confidentiality, and legal will determine
24 whether those were the correct bills or not.

25 So we need -- we need to do more than -- if

1 THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING
2 we're going to review this case, which I don't think we
3 need to, we need to do more than just do the RUCO's
4 thing.

5 Okay. (Indiscernible).

6 COM. MUNDELL: Am I on the list, Mr. Chairman?

7 CHMN. GLEASON: Yeah. Just -- you'll be right
8 after Hatch-Miller.

9 COM. HATCH-MILLER: Okay. Thank you,
10 Mr. Chairman.

11 Again, and my position is this, there's been
12 three Commissioners that feel it's time to reopen it, then
13 that's what we do, because that's our procedure, that's
14 our process. And I think that we -- with all of that
15 process, I think.

16 As far as RUCO's statement, you know, I hate to
17 be quite so frank, but I think, you know, it's clearly --
18 it's clearly election season, and there's -- there's three
19 positions opening up, and I think that that particular
20 comment was just simply part of some politics setting up
21 the election. You know, I see that has a purposeful act.

22 Obviously, it's insulting to us and it was
23 inappropriate. So -- but I'm not going to get all bent
24 out of shape. That's what happens in politics and that's
25 what people do.

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2 As far as these other issues, Commissioner
3 Gleason, we'll have ample time during the hearing to
4 address them, just as long as we're not confined so much
5 that we can't get the witnesses and the testimony that we
6 feel is necessary.

7 CHMN. GLEASON: Okay. Mundell?

8 COM. MUNDELL: Thank you, Mr. Chairman.

9 As I said when I voted, I think I'm not sure
10 that we really stepped back and analyzed it from the
11 perspective as I said. We're not just bean counters
12 analyzing different accounting mechanisms or numbers.

13 In this case, as you recall, the people of that
14 area were promised certain things by the former company
15 and as it evolved, that's not how it turned out.

16 So I want to go back to my original statement
17 that, we're not just, you know, analyzing numbers. We're
18 trying to do what's fair to both the company and the
19 customers of this area. And sometimes that means that we
20 have to think outside of the box, and that's why I voted
21 for the hypothetical capital structure.

22 I recall voting for all the amendments that
23 would have lowered the rate, notwithstanding what the
24 Chairman said about a 4 to 1 vote. In any event, that's
25 water under the bridge. We ought to move forward.

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2 And as Mr. Kempley indicated, if we grant the
3 application for rehearing, as I understood his legal
4 analysis, then all of the issues are on the table,
5 including the Chairman's issue about whether the
6 attorney's fees were appropriate or not.

7 So I would just suggest that we move forward.
8 You know, somebody make a motion that we grant the
9 application for rehearing. And then we can, in fact,
10 litigate and discuss all these issues in the -- in the
11 future.

12 COM. HATCH-MILLER: Yes. And hear hear.

13 You know, I mean the -- the thought that I had
14 to draw was really critical. And I said that
15 (indiscernible) as far as the reason I'm so firmly
16 convinced about that is this Commission has acted, since
17 the day I walked through this door, six years ago, every
18 time to try to get the cost to rate payers as low as we
19 possibly could. There has not been an exception to that.
20 And I don't -- I can't even -- I can't even fathom this
21 Commission acting another way.

22 And in fact, nationally -- the national
23 analysis -- and it's been done on regulatory
24 commissions -- this Commission consistently comes in
25 the -- well within the group -- not even in the middle,

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2 but well within the group that is most consumer friendly,
3 so it's just (indiscernible).

4 COM. MUNDELL: Yeah, Mr. Chairman?

5 CHMN. GLEASON: Yes, Mr. Mundell?

6 COM. MUNDELL: The words that RUCO used were,
7 yes, a little strong.

8 But in this particular case, with the
9 amendments that were proposed, we did have the opportunity
10 to lessen the impact on the customers with the
11 hypothetical rate structure, again, which just isn't
12 usual. We have used that in the past. And so there were
13 some opportunities to lower the impact.

14 And I agree with you, their words were a little
15 strong. But in this particular case, we did have that
16 opportunity and we failed to -- to take advantage of it.

17 And so we ought to again move forward with the
18 application for rehearing and we can discuss all of those
19 things in the proper setting.

20 COM. MAYES: Mr. Chairman?

21 CHMN. GLEASON: Yes.

22 COM. MAYES: I'd like to make a motion, unless
23 Commissioner Pierson needs to say something else.

24 COM. PIERCE: Well, if I could, just -- and I
25 would just like to say that, you know, when I read RUCO's

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2 words, I -- you know, they stung a little bit. And that's
3 what makes someone weigh in their mind just how fair they
4 were to each side, and then to try to see if there is a --
5 a balance (indiscernible). And that's why I wrote the
6 letter.

7 I think RUCO probably should have said it
8 appears that the Commission, I mean, and maybe in this
9 case -- in this case or something like that. The choice
10 of words was probably something that I hope they would
11 regret. Perhaps not, if in fact, you're correct it's
12 political.

13 I personally think that we've heard so much
14 testimony -- and I'm not sure what else we're going to
15 hear. I mean, I'd be -- I would prefer to have a motion
16 that limits it to two issues. That's my preference.

17 It doesn't appear that, you know, I look at the
18 ceiling, because that's where Mundell's (indiscernible)
19 coming from, and -- but I'm willing to hear whatever you
20 think is appropriate to hear. However, it does -- it does
21 appear to me that it is -- what we're really looking at is
22 the narrowness of these two issues -- the hypothetical
23 capital structure recommendation of RUCO's, and RUCO's
24 excess capacity recommendation. And how we -- we think
25 that -- how we think that those things really are the --

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2 they're the crux of where we might make an adjustment or
3 look at what our policy is.

4 And I agree that it's policy of the future --
5 things that we will look at; what we're telling water
6 companies in the future. So I would be very careful as we
7 go through that -- and how they'll get funded, how quickly
8 they'll be able to recover. And at the same time balance
9 the rate payers not having to have such sticker shock.
10 And you can have sticker shock in a percentage and
11 (indiscernible) that much in (indiscernible). In this
12 case, I think it was money and percentage. It wasn't --
13 it wasn't just the percentage thing.

14 And so that's what we have kind of been
15 wielding just a little bit. And I just -- so that's where
16 I'm at. And I -- but I would prefer, frankly, to keep it
17 on those two.

18 CHMN. GLEASON: Yes?

19 COM. MAYES: Thank you, Mr. Chairman.

20 I agree with Commissioner Pierce. I would
21 prefer to keep it to excess capacity of hypothetical
22 capital structure.

23 Opening it up to everything would include my
24 ability to reoffer my amendment on spreading out the
25 rates. So I mean I just don't think that we need to do

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2 that, as well as, you know, relooking at the litigation
3 costs.

4 But if that's the Chairman's druthers, we can
5 certainly take a look at all of my amendments.

6 COM. MUNDELL: Mr. Chairman, could I jump in
7 for a second?

8 CHMN. GLEASON: Yes.

9 COM. MUNDELL: Commissioner Mayes, I would
10 agree with the two issues that you talked about -- excess
11 capacity and hypothetical structure.

12 But just out of trying to get consensus here,
13 it would seem to me that -- I mean, I'd be willing to also
14 add the attorney's fees, because I don't think we had an
15 opportunity, and I voted for -- I voted to reduce the
16 attorney fees. But as -- trying to be fair to both sides
17 here, it would seem to me that if we're going to reopen
18 it, that we ought to -- because we didn't have a chance to
19 do it in the open meeting -- look in a little more detail
20 at some of the time slips that may have contained some
21 attorney/client privilege information that, in reality,
22 would, in fact, be reasonable rate case expenses.

23 So it would seem to me we ought to do your two,
24 at least I would like -- my preference would be to do your
25 two and also then analyze the attorney fee issue and --

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2 and the time slips to see if there's some area there that
3 would be appropriate to change.

4 That's my -- my position. But we'll see how
5 the vote goes.

6 CHMN. GLEASON: And (indiscernible).

7 COM. HATCH-MILLER: This is Shawn
8 (indiscernible). The expenses to the company for the
9 extended hearings and things are -- are in a future rate
10 case. Is that correct? Are recovered in a future rate
11 case? They're not facts that have been recovered for this
12 particular rate?

13 MR. KEMPLEY: Mr. Chairman, Commissioner
14 Hatch-Miller, there is an element of the rate case expense
15 that hopefully is what you're asking in this proceeding,
16 to be amortized over future -- over a future period of
17 time, normally, around three years. I don't recall
18 what -- what it is in this particular case.

19 But to the extent (indiscernible) of you, to
20 the extent that additional costs are incurred, it would be
21 appropriate in my view for the Commission to make itself
22 aware of those costs and to determine what's the
23 appropriate treatment of those costs. And that would
24 involve amortization over some future period of time.

25 In the next rate proceeding, you look at

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2 whatever costs are associated with that particular
3 decision. You don't look back at this case and try to
4 address the rate case expense in this case.

5 COM. HATCH-MILLER: Let me be clear, this is
6 extraordinary, obviously (indiscernible) a request for a
7 rehearing. So it's part of the overall case, but it's
8 kind of extraordinary, in terms of the costs normally
9 associated with the case. But I mean there's going to be
10 (indiscernible) about the (indiscernible) and the experts
11 (indiscernible) and the analysis done.

12 So again I don't know what the cost is going to
13 be (indiscernible), for sure. And so we should, in this
14 particular instance while we do this, reallocate that for
15 future amortizing.

16 MR. KEMPLEY: Mr. Chairman, Commissioner
17 Hatch-Miller, maybe I'm not being clear. I'm talking
18 about basically pay as you go. I'm saying that -- and I
19 don't remember what the numbers are in this case -- but
20 illustratively, let's say there was a \$300,000 in rate
21 case expense to be amortized over a two-year period of
22 time and a hundred thousand dollars annually. Okay? And
23 that was what was in the case and that's basically what
24 you came down with.

25 My view is if you incur an additional \$100,000

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2 in rate case expense as a result of a 40-252 --

3 COM. HATCH-MILLER: Okay.

4 MR. KEMPLEY: -- then you need to address that
5 and provide for that in this proceeding.

6 COM. HATCH-MILLER: With the 4252 proceeding?

7 MR. KEMPLEY: As part as your final order in
8 this matter.

9 COM. HATCH-MILLER: Thank you.

10 COM. MUNDELL: And Mr. Johnson, and
11 Mr. Chairman, and Commissioner Hatch-Miller, what I was
12 talking about though, as you recall in this case, we
13 reduced existing attorney's fees by a certain amount
14 because the company had the burden of proof, and the
15 majority of the Commissioners felt they hadn't met that
16 burden of proof.

17 And the reason why that occurred is because
18 there were some time slips that the company argued
19 contained attorney/client privilege information so we
20 couldn't determine whether or not they were appropriate
21 for reasonable attorney's fees.

22 I'm saying we ought to look at those in the --
23 as we go forward. Because now we'll have an opportunity
24 to look, if we could do it in camera, we could do it under
25 seal, so we could look at those in detail to determine

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2 whether or not they were appropriate attorney/client -- or
3 attorney fees.

4 COM. PIERCE: Thank you, Mr. Chairman. And
5 Commissioner Mundell, I was very clear about what you were
6 talking about.

7 COM. MUNDELL: Okay.

8 COM. PIERCE: I was speaking to the larger
9 issue, which is (indiscernible).

10 COM. MUNDELL: I thought maybe I didn't make
11 myself clear. It's a little hard when you're on the
12 phone.

13 COM. PIERCE: I understand that. But what I
14 was speaking to was that you -- we were discussing how to
15 limit our discussion. And we had three items now on the
16 table and I just wanted to address this fourth item that
17 seemed to be one that, for me, was up in the air.

18 Do they recover the costs? The added costs for
19 the -- for this particular rehearing now or later? And
20 that's all I was asking Mr. Johnson. It's just like --
21 it's like a 4th item that --

22 (Conclusion of Tape 1, Side A; Commencement of
23 Side B.)

24 CHMN. GLEASON: Yes?

25 COM. PIERCE: Mr. Chairman, I -- when I wrote a

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2 letter to support the rehearing, I really -- at the time I
3 was focused on two items.

4 Beyond that full-blown hearing, I would have --
5 if that was going to be the case, I would not have written
6 the letter. I mean, I don't -- I don't want another
7 hearing, and I'm not -- a full-blown hearing -- and I'm
8 not going to support a full blown hearing.

9 So as long as we can narrow it to I guess these
10 three issues, then that's -- that we discussed, then
11 I'm -- I'm probably not going to be in support of the
12 rehearing.

13 So I would like to have it, if we're going to
14 craft a motion to that effect, that Mr. Kempsey help us to
15 make sure, because that's the one I'm going to support is
16 one that keeps it narrow.

17 And if you want to do the discovery on these
18 attorney's fees, I can understand that. That's being
19 fair. But beyond that, I sure don't want to hear much
20 more.

21 COM. MUNDELL: And then Mr. Chairman,
22 Commissioners, I would agree. I mean, I would be in
23 support of those -- of a rehearing on those three issues
24 that you just mentioned.

25 MR. KEMPLEY: Commissioner Pierce, did that --

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2 in what you were saying, does that include in your mind
3 the cost that I was talking about, the cost of --
4 (indiscernible.)

5 COM. PIERCE: I mean, I don't know what --
6 Mr. Chairman, I don't know -- I really don't know how to
7 address that -- that one.

8 I recognize -- actually frankly, I think it
9 would be very simple with the first two items because we
10 really deliberated them quite well before. I don't know
11 how much preparation or cost it would be.

12 What's going to be costly is that third item,
13 attorney's fees and going through and collecting all that
14 stuff.

15 So we're talking about rehearing costs on an
16 item that benefits the attorneys, potentially. I'm sorry.

17 COM. MUNDELL: To that point, Mr. Chairman,
18 Commissioner Pierce.

19 I don't know if it would be that difficult. I
20 mean, I think Staff could get together and RUCO with
21 Mr. Shapiro and the other attorneys for the company, and
22 have an opportunity, you know, to maybe look at each
23 billing statement.

24 I think one of the issues was, if you recall,
25 there was I think lack of discovery or lack of the ability

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2 to look at them. But if they could look at them in
3 camera, they may come -- they may be able to come up with
4 a stipulation that would be fairly simple and make a
5 proposal to us. And then we could certainly look at the
6 time slips also in camera ourselves if -- I don't think it
7 would be that timely. I may be wrong.

8 But I know that courts do that all the time
9 when they get applications for attorney's fees. They look
10 at the affidavit that's filed and then if they have
11 additional questions they can go to the actual time slip.

12 COM. PIERCE: Mr. Chairman, Commissioner
13 Mundell, you know, you've been on the billing side of that
14 and I've been on the paying side of that. And I need to
15 tell you it's being -- it always seems higher than what
16 you guys on the billing side think.

17 COM. MUNDELL: Well, that's a whole different
18 issue, Commissioner.

19 CHMN. HATCH-MILLER: I just want to be real
20 clear about what we're voting on, because it's going to be
21 clear to me. We will not be voting to allow them to
22 recover the additional cost of defending themselves in
23 this rehearing?

24 CHMN. GLEASON: Yes, we will.

25 COM. HATCH-MILLER: Well, I don't know. I

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2 didn't hear that. I heard three items and that didn't
3 include that, so...

4 COM. MAYES: If they --

5 CHMN. GLEASON: Well, we will review the rate
6 case costs, period.

7 MULTIPLE VOICES: (Indiscernible.)

8 CHMN. GLEASON: Yes, (indiscernible).

9 ALJ FARMER: Mr. Chairman, Commissioner, Lynn
10 Farmer for the Hearing Division.

11 I just want to be clear, I know you've been
12 saying the words "rehearing." Whether or not you actually
13 mean that that goes back to a hearing before an ALJ or
14 not, or whether -- sometimes the Commissioners just go
15 back to an open meeting and propose amendments and vote.

16 I don't think that there necessarily needs to
17 be any more evidence on the issues that were raised in
18 lieu of petition for reconsideration. But the issue that
19 you've raised about the attorney's fees may require
20 further proceedings. And if that's the case then I just
21 need to know exactly what you're expecting the process is
22 going to be for this.

23 CHMN. GLEASON: Yes.

24 COM. MAYES: Well, and I do think that they're
25 separate questions.

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2 I mean, what Commissioner Mundell was talking
3 about and the issue that was the subject of one of my
4 amendments that did pass, I remember we're -- we're
5 talking like 30 cents on the bill. That's a very minor
6 item relative to the huge impact that hypothetical capital
7 structure and -- and excess capacity would have had. But
8 anyway, okay, so 30 cents. That's the issue that was in
9 the record. That's the issue of Mr. Shapiro's legal fees
10 as a result of the case.

11 And then -- and then I guess Commissioner
12 Hatch-Miller and Commissioner Gleason want to also discuss
13 what Mr. Shapiro should be paid for his services to deal
14 with the 40-253 (sic). And how do we address -- does that
15 need to be addressed now, and how do we address it?

16 ALJ FARMER: Mr. Chairman, Commissioner Mayes,
17 the issue of rate case expense was a litigated issue in
18 this proceeding.

19 I think the company had requested about
20 \$170,000 for attorney's fees, and the recommended order
21 disallowed \$90,000 of it, and so it ended up with \$70,000
22 in rate case expense.

23 If we look at that issue again, which is the
24 underlying issue of, Did the company support the level of
25 attorney's fees that they requested? Then -- and also if

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2 you're -- if you're conducting further proceedings, then I
3 think it is fair and appropriate to look at the
4 appropriate attorneys' fees for the whole case.

5 COM. MAYES: All right.

6 So Mr. Chairman, I'll go ahead and make a
7 motion, and we'll see whether it's appropriate.

8 I would move that the Commission rehear
9 Decision Number 69664, and specifically to address the
10 issues of excess capacity, the company's capital structure
11 or hypothetical capital structure, and the company's
12 attorney's fees.

13 ALJ FARMER: Excuse me, Commissioner, I'm sorry
14 to interrupt, but when you say "capital structure," do you
15 also include the cost of equity in that issue? Because we
16 didn't change the capital structure.

17 COM. MAYES: I mean -- I mean the hypothetical
18 capital structure as addressed in my amendment.

19 ALJ FARMER: Okay. And that did address a
20 change in cost of equity as well?

21 COM. MAYES: Right.

22 MULTIPLE VOICES: (Indiscernible.)

23 CHMN. HATCH-MILLER: Okay, discussion?

24 CHMN. GLEASON: I didn't understand -- is
25 the -- the weighted cost of capital -- or I mean the cost

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2 of capital, is it going to be the same thing?

3 ALJ FARMER: Mr. Chairman --

4 CHMN. HATCH-MILLER: (Indiscernible?)

5 ALJ FARMER: Mr. Chairman, Commissioners,
6 that's why I was asking Commissioner Mayes.

7 The capital structure is a percentage of how
8 much debt, how much equity. But separate from that is the
9 issue of what costs you assign to each component and I was
10 trying to get clear whether her motion included both those
11 issues. And she just said hypothetical capital.

12 COM. MAYES: My motion would include both of
13 those items.

14 ALJ FARMER: Okay.

15 COM. MAYES: And as -- as put forward in Mayes
16 proposed amendment (indiscernible).

17 Motion is only the table (indiscernible).

18 COM. MUNDELL: Thank you, Commissioner Mayes.

19 I'm ready to vote whenever we're ready.

20 COM. MAYES: Yeah. But --

21 CHMN. GLEASON: Judge, does -- when we -- when
22 she includes both of those, is that almost mandatory for a
23 hearing?

24 ALJ FARMER: Mr. Chairman, no, I don't believe
25 so. There's -- there -- maybe the parties would like to

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2 speak to this, but there's evidence on the record for cost
3 of capital under a lot of different scenarios, but
4 Mr. Kempley might look at it.

5 MR. KEMPLEY: Mr. Chairman, Commissioners, I
6 don't have 40-253, the rehearing statute sitting in front
7 of me, but I think it contemplates the opportunity for the
8 applicant at least, and -- and presumably the party who is
9 applying for rehearing to present evidence.

10 So while it is possible, as Judge Farmer
11 indicates, to have the matter considered simply as an open
12 meeting, I don't think that that process would comply with
13 the statute if the parties had evidence that they -- they
14 wish to present.

15 The statute, in fact, specifically indicates
16 that the Commission give consideration to evidence that
17 has come into existence since the original decision was
18 issued.

19 So -- so I think that with -- with what's on
20 the table in this motion, unless the applicant and RUCO
21 wish to contradict me, that there's a necessity to have an
22 evidentiary proceeding.

23 COM. MAYES: Mr. -- you're saying there is --
24 we need to have an evidentiary proceeding. Why can't the
25 Commissioners sit as -- as judges at the evidentiary

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2 hearing?

3 MR. KEMPLEY: Oh, Mr. Chairman, Commissioner
4 Mayes, if the -- the Commission can always -- can always
5 do that. I'm just saying there has to be one.

6 COM. MAYES: Well, that's -- that would be
7 my -- that would be part of my motion, that that would be
8 the proceeding the Commission would have.

9 CHMN. HATCH-MILLER: Well, I'm sorry, but you
10 know, I have a -- a bad feel about that.

11 I think it -- the five of us sitting as judges
12 at a hearing has not been really successful. We've done
13 that before and it gets very messy.

14 I think when we -- if we're going to have a
15 hearing, we turn it over to the hearing division and have
16 an ALJ that's experienced to -- to run the hearing.

17 Now if, at this point, it would appear that
18 there would be -- if we vote for your amendment, that
19 we -- we're -- we will have a hearing (indiscernible).

20 COM. MAYES: Well, I don't -- well, I don't
21 think -- we're not talking about new evidence here.

22 We're talking about three issues that were
23 essentially already litigated, not essentially, they were
24 already litigated, heavily litigated. There is a great
25 deal of evidence in the record on all of these issues.

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2 The only piece of it that would be conceivably
3 new is what Mr. Shapiro is going to charge the company for
4 participating in this case. All other issues are already
5 addressed.

6 So why do we need an ALJ? Why cannot the
7 Commissioners handle these issues?

8 CHMN. GLEASON: Mr. Chairman --

9 CHMN. HATCH-MILLER: Because the -- you have
10 included both the capital structure and -- and the
11 balances there. It's just a very complicated issue.

12 COM. MAYES: Both were heavily litigated,
13 Mr. Chairman, and there is a transcript for the case.

14 CHMN. HATCH-MILLER: But we -- we need to --
15 okay. We -- we've got a rule. We've written a rule.
16 We're not going to change the rule now. Is that correct?

17 COM. MAYES: I'm sorry. I don't understand
18 your question.

19 CHMN. HATCH-MILLER: Well, the rule has been
20 written. What we -- what we need is a hearing to rewrite
21 the rule.

22 COM. MAYES: Well, I have amendments that could
23 be adopted. I had amendments that conceivably I could
24 reoffered that could be adopted to the recommended order
25 to change the order. It's pretty straightforward.

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2 COM. MUNDELL: Mr. Chairman, if I could just
3 jump in for a second?

4 CHMN. GLEASON: Yes, please.

5 COM. MUNDELL: Mr. Kempley, for purposes of
6 today, can't we grant the motion for rehearing, and then
7 as you indicated, if a party requests a hearing, we can
8 cross that bridge in the future and determine whether or
9 not the Commissioners conduct the hearing or whether we
10 send it back to the Administrative Law Judge?

11 MR. KEMPLEY: Mr. Chairman, Commissioner
12 Mundell, you certainly could do that.

13 Again, as originally contemplated, I think that
14 this proceeding was simply to decide the threshold
15 question of whether to grant the application for a
16 rehearing, although to the extent you can specify the
17 process here, it'll -- it'll make it easier to -- to
18 conduct the rehearing.

19 But -- but the primary reason I think that this
20 item was on this agenda was to avoid the application for
21 rehearing being denied by operation of law. And you can
22 do that with a fairly simple action.

23 COM. MUNDELL: Right. Because of the
24 time element and it would be denied if we didn't do
25 something today.

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2 CHMN. GLEASON: But then, Mr. Kempley, when do
3 we make these other decisions?

4 MR. KEMPLEY: Well, Mr. Chairman, you make
5 those decisions at the time that -- that they become
6 necessary. Either, you know -- either, as I said, you
7 could make some of them today.

8 If you wanted to wait and -- and have the
9 parties, you know, see what the parties' reaction is,
10 you -- you'd have to consider those issues separately at a
11 later time.

12 We don't -- again, we don't -- the major issue
13 here is whether to allow the application for rehearing to
14 die by operation of law.

15 But much of the process, if you can decide
16 today, I think it's desirable. It's clear there's a lot
17 of conflict over that question.

18 CHMN. HATCH-MILLER: But -- excuse me. But in
19 other words, if we vote to rehear this thing, we could ask
20 the parties to write briefs to --

21 MR. KEMPLEY: Mr. Chairman, let me speak a
22 little bit back to the -- to Commissioner Mayes's last
23 comment.

24 If what you do is grant the application for
25 rehearing on the issues that have been described, as I

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2 indicated, the way the rehearing statute reads, there is
3 an opportunity implied by that statute for parties to
4 present additional evidence. Whether that additional
5 evidence is presented to the Commission as a body or to an
6 Administrative Law Judge assigned to hear the matter, is a
7 decision, you know, that you can make now or you could
8 make later.

9 CHMN. HATCH-MILLER: Commissioner?

10 COM. HATCH-MILLER: Thank you, Mr. Chairman.

11 Let me see if I'm understanding you.

12 Obviously (indiscernible) is trying to consider
13 the need to provide fairness in this process to all
14 parties. And part of that fairness is to be able to -- if
15 the order is going to be changed, it would help the
16 applicant to have a chance to present the evidence they
17 think which might counter that.

18 Usually in a hearing process, there's a
19 prehearing conference that -- where all sides get together
20 and talk about, you know, who the -- what witnesses we'd
21 like to present, (indiscernible) needs they're going to
22 have, and then there's some kind of calendar for that
23 process to evolve.

24 You know, obviously, one of the things that's
25 going on here is we give brief deference to RUCO in their

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2 opinions, constantly, since I've been here. When RUCO has
3 something to say, this body takes them into very serious
4 consideration. And this is -- this is carefully and
5 oftentimes against the recommendation.

6 In this case, they and the Commissioners
7 supporting them are saying that, Yes, we're going to
8 rehear this. That doesn't -- that doesn't bypass the need
9 to provide justice under the law, and fairness for the
10 applicant or other parties to present the information they
11 think is necessary to protect their interest in this.

12 MALE SPEAKER: Mr. Chairman, Commissioner
13 Hatch-Miller, I think I agree with pretty much everything
14 you just said.

15 COM. PIERCE: Mr. Chairman?

16 CHMN. GLEASON: Yes.

17 COM. PIERCE: What my concern is, Mr. Chairman,
18 is repetition, repetition of what we've already heard.
19 And -- or what we've already read or both. And that's
20 something that it would be ridiculous for us to put
21 ourselves through. And let me remind you, it seems to me
22 that if we have an ALJ hear a half hour or an hour's worth
23 of evidence, with us present, I don't know what else needs
24 to be (indiscernible). We're the deciders.

25 MALE SPEAKER: Mr. Chairman, Commissioner

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2 Pierce, I guess the -- the only difficulty I see with
3 that -- that kind of view is that, as we sit here, I don't
4 think we know what additional evidence parties may believe
5 is relevant to decide, to -- for your consideration of the
6 issues that have been specified for consideration.

7 You know, it is an application for rehearing,
8 not an application for reconsideration. So the statute
9 really does contemplate some kind of a hearing process.

10 I've said before, and it's clearly true that
11 the Commissioners can be the body to hear that evidence,
12 if it is, you know, within the -- the bounds of -- of a
13 proceeding that you wish to conduct.

14 I, frankly, kind of like Commissioner
15 Hatch-Miller's thought of having a prehearing conference
16 convened, at which time you could, you know, evaluate
17 better what -- the extent of evidence parties might
18 believe is appropriate to present on the issues that you
19 would wish to consider.

20 COM. PIERCE: And perhaps new evidence, you
21 mean? Because rather than take in documents they already
22 have.

23 I think, Mr. Chairman, and members --
24 Commissioners, I think that --

25 Mr. Kempley, you think that assigning an ALJ to

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2 hear new evidence would be appropriate? And then we could
3 ask the parties -- we could ask the party right now how
4 much time they'll need in a hearing.

5 I think they probably know if there's new
6 evidence or not, if there's things that should be out
7 there. And I don't -- I think they know we don't want to
8 see something prolonged. We just want to know if there's
9 actual new evidence that could have an impact in our
10 thinking here. And then limit the time, then we can limit
11 the time that they're going to have, or limit the hearing,
12 you know, all of those things, so that we can get back to
13 this.

14 And I think the real issue for some of us is,
15 Look, if we're going to make a change, we want to not have
16 a delay because what we did already is in effect. And if
17 we're going to make a change, that needs to happen. And
18 if we're not, we just need to get it settled. We need to
19 get it settled soon.

20 MR. KEMPLEY: Mr. Chairman, Commissioner
21 Pierce, there's certainly nothing wrong with hearing from
22 the parties today on extent of the additional evidence
23 they think might be appropriate to consider the matters
24 that you may have under consideration for a rehearing.

25 It's sometimes hard to distinguish what's new

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2 evidence and what's repetition of old evidence, although I
3 certainly agree that what's already been presented is
4 something that it is desirable to avoid and you ought to
5 do your best to avoid having parties repeat evidence
6 that's already on the record.

7 So you know, there's no reason not to hear from
8 parties today, if you want to.

9 CHMN. GLEASON: Well, this is a Staff meeting
10 where I agree with that. We will have a prehearing
11 conference, if you want to, so they will have -- will have
12 thought out the thing and they'll know who they want to --
13 they want to make (indiscernible).

14 COM. MAYES: Well, Mr. Chairman, I think I --

15 COM. PIERCE: Well, that's part of your motion.

16 COM. MAYES: I think I was next and I think we
17 decide this as a group.

18 And actually I would be interested in hearing
19 from RUCO and from the company about whether they need a
20 hearing to hear additional evidence.

21 I mean, again, I'm with Commissioner Pierce,
22 and I think this is a fairly straightforward proceeding.
23 And I don't know, maybe at some point I'd like to ask
24 Mr. Kempley whether maybe we ought to do this as a 252.
25 And in the 252 is it more straightforward to address, you

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2 know, some of these issues that again have been heavily
3 litigated by the parties?

4 COM. MUNDELL: Mr. Chairman, to that point, if
5 we could have a yes or no answer from the parties, I mean,
6 I -- as I said earlier, we could vote for the application
7 for rehearing.

8 If one of the parties requests a hearing, then
9 at that point in time, we can decide whether the
10 Administrative Law Judge hears it or the Commissioners
11 hear it.

12 But I don't -- you know, I'm going to go here
13 in a minute or two. But because -- it seems to me they
14 can say, Yes, we need a hearing, but I don't want a half
15 an hour discussion of why they need it, if we're going to
16 hear from them.

17 CHMN. GLEASON: Okay. Are there -- is there
18 three people that want to allow them to speak to how much
19 evidence they need to -- what's the word? I can't think
20 of it.

21 MALE SPEAKER: Mr. Chairman, forgive me, I'm
22 not sure what -- I didn't hear --

23 CHMN. GLEASON: Oh, how much -- okay, well,
24 we'll allow the applicant and the (indiscernible) to say
25 how much evidence, how much new evidence they need.

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2 COM. MUNDELL: And Mr. Chairman, could you ask
3 them to limit it to maybe a minute or two, to "Yes, we
4 need a hearing, this is why."

5 CHMN. GLEASON: I don't have much force to
6 limit that, unless it's the other hearing.

7 MALE SPEAKER: Mr. Chairman, isn't it just
8 basically a yes or no, here's how much time I'll need?
9 And it's if it's anything --

10 CHMN. GLEASON: No. It's -- it's going to be
11 more complicated than that, I'm sure. But let's -- let's
12 find out.

13 Mr. -- okay, RUCO.

14 MR. POZEFSKY: Thank you. Good morning,
15 Mr. Chairman, good morning Commissioners, and thank you
16 for allowing me the opportunity. I promise I'll limit it
17 to a minute.

18 Just one point that I want to make up in your
19 deliberations from a procedural standpoint. We have --
20 the 20 days expired April 7th, 30 days for appeal gives us
21 to September 2nd --

22 MALE SPEAKER: August 2nd.

23 MR. POZEFSKY: Excuse me. I'm sorry.
24 August 2nd is when the 20 days expired. And 30 days, from
25 my calculation, gives us to appeal it is September 7th.

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2 And keep that in mind, that's to set a time limit on the
3 appeal.

4 As far as new evidence is concerned, we
5 don't -- the only thing we would do (indiscernible)
6 capital (indiscernible) figures that we don't have any new
7 evidence that -- this is really Mr. Kempley
8 (indiscernible) certification of the statute.

9 I don't think a full-blown hearing or a hearing
10 that's going to be long and engaged (indiscernible).

11 MR. SHAPIRO: Jason Shapiro, on behalf of the
12 utility Gold Canyon Sewer Company.

13 I do agree with Mr. Kempley, I read the statute
14 very carefully. It says, If after a rehearing and a
15 consideration of all of the facts, the Commission then
16 determines that the order need to be changed, modified, et
17 cetera.

18 I think fundamental due process requires the
19 Commission to give all the parties an opportunity to be
20 heard on whatever issues are on the table. We've -- I've
21 heard you all discuss the fact that there's a -- a lengthy
22 record.

23 Well, if there was a lengthy record, we
24 wouldn't be sitting here today, apparently, because the
25 decision was made a month ago, after 18 months of hearing

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2 this case, and you know, RUCO starts off with fundamental
3 fairness. Fundamental fairness says that we should be
4 moving on.

5 That said, if we're not going to do that, then
6 I can't tell you how long I need. I need to confer with
7 my client.

8 But I think that the Commission needs to afford
9 an opportunity for the applicant, RUCO, and Staff, to the
10 extent any of them choose to present evidence on any
11 issues that are before the Commission.

12 And I can report back after I have a chance to
13 consult with the client on what we would do. But
14 particularly, if cost of capital is going to be on the
15 table, the cost of capital testimony in this case is old,
16 at this point in time, as Mr. Pozefsky said, it has to be
17 updated. That's the minimum that I would need to confer
18 with my client on.

19 MR. JOHNSON: Mr. Chairman, Commissioners, I
20 guess to the question that -- that I still had is when I
21 hear the discussion about rate (indiscernible), the
22 question that I haven't heard discussed by the Commission
23 is whether or not you expect some testimony and evidence
24 (indiscernible).

25 If that is your desire, we'd appreciate knowing

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2 that now, otherwise we won't be submitting it
3 (indiscernible). You know, in terms of any other issues,
4 (indiscernible) address.

5 MALE SPEAKER: I think Mr. Johnson,
6 Mr. Chairman, Commissioners, from being involved with this
7 case from the beginning and hearing the concerns of the
8 Commissioners, I think from Staff perspective, if we
9 presented any new evidence, it would just be evidence as
10 to the appropriate mechanism to mitigate rate
11 (indiscernible) that's consistent with traditional rate
12 making.

13 And I think that we need an opportunity to
14 meet, in-house, to be able to decide, you know, exactly
15 how we would address each of the issues you've
16 identified. But that's one thought that I had.

17 CHMN. GLEASON: Mr. Shapiro, you're not ready
18 to decide today whether you -- you need to talk to your
19 client?

20 MR. SHAPIRO: Well, I -- Mr. Chairman, no. I'm
21 not ready to sit here today and tell you how long we need
22 or what evidence we're going to present.

23 This is a somewhat unusual process to be at the
24 Staff meeting, a special open meeting, which I -- which I
25 just got notice of less than 24 hours ago, what my

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2 position is.

3 My position is that the statute allows me and
4 my client to present evidence so that the Commission may
5 consider all of the facts.

6 As of today, I apologize I can't be more
7 specific, but Gold Canyon Sewer Company deserves an
8 opportunity to confer with their counsel and make a
9 decision as to the appropriate presentation, if you choose
10 to go down this road.

11 COM. MAYES: Mr. Chairman?

12 Mr. Kempsey, what is the proceeding -- what is
13 the procedure to operate under 4252?

14 We have done that in the past, on multiple
15 occasions, if I recall. Nothing unusual about that. So
16 what are do we do under that scenario?

17 MR. KEMPLEY: Mr. Chairman, Commissioner Mayes,
18 in this instance proceeding under 4252 would look just
19 about the same as proceeding under the application for
20 rehearing statute.

21 You do have an obligation under that statute to
22 provide notice and an opportunity to be heard to the
23 affected entities.

24 So from a -- from a lay-of-the-land
25 perspective, I think it looks very much like granting the

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2 application for rehearing.

3 COM. MAYES: Okay.

4 Mr. Chairman, well, you know, I guess my
5 motion, which I think is still on the table, remains the
6 same.

7 I would not anticipate, certainly, the parties,
8 and under the statute, have an opportunity to present new
9 evidence. The record, I think is -- is fairly complete
10 on -- on the issues that I have raised.

11 But I -- and I would envision having a hearing
12 that would be presided over by an ALJ to be followed by a
13 vote of the Commission. And I would anticipate that the
14 Commissioners should be sitting on the bench at the
15 hearing.

16 And if I need to restate my motion, I can. But
17 I think it's still on the table.

18 COM. PIERCE: Mr. Chairman, I support that
19 addition to your motion.

20 But I -- I think that, as I listen to the
21 company's attorney talking about rehearing consideration
22 of all the facts, I think we can consider all the facts,
23 and we considered really -- and we will consider the
24 existing facts in this case.

25 What we want to hear is anything that happened

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2 after the order, more specifically. The other things that
3 may have changed and altered may be facts for things in
4 evidence now, because otherwise we already know those
5 things.

6 CHMN. GLEASON: Well, Mr. Kempley is that
7 possible? Or does the statute say that, as Mr. Shapiro
8 says, he has the right to present all the facts, any facts
9 that he likes?

10 MR. KEMPLEY: Mr. Chairman, Commissioners,
11 Mr. Shapiro came very close to quoting the statute
12 verbatim, if he didn't quote it verbatim.

13 But I still don't think that that necessarily
14 is in direct conflict with what Commissioner Pierce says.

15 Commissioner Pierce is saying, again in a
16 slightly different way, that he doesn't think that it's
17 necessary to put facts that are already in evidence back
18 in evidence.

19 And there may be additional facts that -- that
20 Mr. Shapiro and his client -- and of course
21 Mr. Pozefsky -- even indicated that there was some
22 additional facts that RUCO would want to put in evidence,
23 and the Staff may have some additional facts to put in
24 evidence.

25 But -- but I do think that -- that offering

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2 that opportunity doesn't necessarily mean you have to
3 hear, in the evidentiary proceeding, again, all of the
4 things that you've heard in the evidentiary proceeding
5 before.

6 I did say earlier that sometimes it's hard to
7 distinguish between new and repetitive. But that's the
8 kind of judgments that Administrative Law Judges make all
9 the time. So I don't think that's at all in conflict.

10 COM. MUNDELL: And Mr. Kempley, isn't that why
11 Commissioner Hatch-Miller's suggestion, about a half hour
12 ago, that you have a procedural conference and the
13 Administrative Law Judge could limit what needs to be
14 heard at some future time?

15 MR. KEMPLEY: Commissioner Hatch-Miller, that's
16 right. Let me get my Commissioners straight.
17 Mr. Chairman, Commissioner Mundell --

18 COM. MUNDELL: I can't hear you.

19 MR. KEMPLEY: That's just as well.

20 MULTIPLE VOICES: (Indiscernible.)

21 COM. MUNDELL: Well, I thought I was
22 complementing you, Commissioner.

23 COM. HATCH-MILLER: Well, you were, and -- and
24 yes, that was the point I was trying to make. It make it
25 a lot easier. That's why they (indiscernible).

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2 CHMN. GLEASON: Okay. Where are we on -- you
3 have a motion now that -- that we're going to grant the
4 rehearing under 215 -- 40-253?

5 COM. MAYES: That's right.

6 COM. HATCH-MILLER: (Indiscernible) I know I
7 missed (indiscernible) over there.

8 So we're not going to approve RUCO's
9 application?

10 CHMN. GLEASON: Oh, yes. That's -- that's the
11 motion.

12 COM. MAYES: It's the same one.

13 CHMN. GLEASON: Oh, 40-253. Never mind.

14 MULTIPLE VOICES: (Indiscernible.)

15 CHMN. GLEASON: Under that -- the applicants
16 have a right to present the (indiscernible) and there's an
17 understanding that there will be a (indiscernible)
18 procedural conference to determine how long this will
19 take. Is that correct?

20 COM. MAYES: Mr. Chairman, (indiscernible)
21 procedural conference, and then address the -- the hearing
22 and what evidence will be needed at the hearing.

23 CHMN. GLEASON: To be conducted by the hearing
24 division?

25 COM. MAYES: Correct.

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2 CHMN. GLEASON: Okay. Okay. Do you want to
3 restate your motion?

4 COM. MAYES: I'll restate my motion, which is
5 that the Commission conduct, pursuant to A.R.S. 40-252 --

6 CHMN. HATCH-MILLER: 253 --

7 COM. MAYES: I'm sorry. 253 (indiscernible).
8 But under A.R.S. 40-253 that the Commission rehear
9 Decision Number 69664, in the Gold Canyon Sewer Company's
10 rate case, to include the issues of excess capacity,
11 hypothetical capital structure, cost of equity, and the
12 company's legal fees.

13 CHMN. GLEASON: Okay. I guess we've already
14 discussed it. All those in favor say aye.

15 (A chorus of ayes.)

16 CHMN. GLEASON: Opposed? No.

17 Three.

18 MALE SPEAKER: You've have three votes. Do you
19 have three votes?

20 CHMN. GLEASON: I wish (indiscernible).

21 MALE SPEAKER: You have five, you have five.
22 You've got three votes.

23 CHMN. GLEASON: Well, (indiscernible) okay.

24 Four ayes and one no, you have passed the -- the amendment
25 to grant the rehearing of 69664.

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2 MALE SPEAKER: Thank you, sir.

3 (Conclusion of electronically recorded,
4 excerpted item on Tape 1, Side B.)

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